

No. 9(I)-81/6 Lab./14934.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration Award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Rai Saheb, son of Shri Bhullar, workman and the management of M/s Hindustan Everest Tools Ltd., Jathari, Sonapat :—

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DEHLI 27

SHRI RAI SAHEB, SON OF SHRI BHULLAR (WORKMAN)

versus

MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS LTD., JATEHRI, SONEPAT

Appearances:—1. Shri Rai Saheb (son of Shri Bhullar) along with Shri Chander Singh.
2. Shri U.C. Pant, along with Shri D.N. Gupta.

ARBITRATION AWARD

The above-named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement, dated 28th April, 1981 under section 10-A (3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (Extraordinary),—vide No. ID/RTK/67/81/26749, dated 27th May, 1981.

The following point dispute was referred to me for arbitration:—

- (1) Whether the action taken by the management was justified and if not; to what relief the workman is entitled to ?

On receipt of the notification, the notices, were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed documents (copies) in support of their contentions in this case, whereas the documents were collectively filed by the Union without being written by any individual workman. The pleadings of the parties gave rise to the following issue which were framed with their consent :

- (1) Whether the workmen remained unauthorisedly absent exceeding 10 days (ten) from duty ?
- (2) Whether the action taken by the management tantamounts to retrenchment, if so, to what relief he is entitled to ?

The parties produced their evidences. The workman examined himself as witness. Shri Rai Saheb stated that he was on duty from 9th March to 19th March, and resorted to Dharna from 20th March till 3rd April, 1981 when he learned that the conditions of the two hunger-strikers have deteriorated, being ordinary members of the union, which is affiliated to INTUC. He added that it was within the knowledge of the management about his being on dharna which was lifted with the intervention of the Labour Department official, who brought a letter with him. He, however, stated that he went to the gate (factory) on 4th April, 1981, but was stopped by the watchman and there were many workers going for duty but 30-32 workers were stopped from entering. He added that he stayed for about 2-3 hours and did not know about the rules and the standing orders of the Company. Nor he had ever seen any notices displayed on the notice board of the Company and has not been paid his dues. In his cross-examination, he told that there were 32 workers on dharna when he did Dharna many used to come and but 32 workers used to stay there for 24 hours. He told that he did not know on which date S/Shri Mathur and Shri Pant came there. He admitted that he did not see the letter brought by the labour department official, but was told as such by other workers. Nor he had any knowledge about the contents of that letter and name of the official who brought it. He admitted that he could not tell the name of the Chowkidar, who refused entry as well the names of the 31 workers who had present on that day. He did not receive the letters dated 25th March, and 27th March, 1981 sent by the management under UPC regarding his absence from duty. Similarly he denied the receipt of Registered A/D letter dated 2nd April, 1981 sent by the management and read the contents "लेने से इनकार करते" on the returned envelopes. He admitted that he did not write to the management for taking him back on duty after refusal by the watchman on 4th April, 1981. He denied his signatures on show-cause notice dated 13th October, 1980. Exb. M-1 wherein mention of the observance of the standing orders have been made. He showed ignorance about the leave procedure/leave card.

While the management examined S/Shri U.C. Pant, Dy. Manager, (Personnel) Shri R.K. Dixit (Personnel Officer), Shri Hira Slingh, Head Watchman and M/s. Rajpal and Niranjan Singh, Watchman, as witnesses, whose recorded statements are on file and the management closed the case. The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workman assailed the action of the management on the ground that there was no disobedience or defiance of the standing orders which could compel the management to invoke clause 15 of the standing orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for acceptance of their justified demand and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of:—

(1) G.T.-Lad—*versus*—Chemical Fibres India Ltd., 79—LIC. P. No. 290.

(2) Buckingham & Co.—*versus*—Venkatiah—1963—LLJ P. No. 638.

He also questioned the bona-fide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz. State Bank of India—*versus*—Subramaniam—and M/s.Hindustan Steel Ltd.,—*versus*—Presiding Officer, Labour Court, and others. He accordingly pleaded that the management while not observing the conditions precedent to the retrenchment committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has no corroboration that the workman was on dharna excepting his lone statement. The number of workmen on dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers, i. e., 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice, dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position—*vide* their letters, dated Ext. W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice, —*vide* endorsement No. 38707, dated, 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal Watchman who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absence can be presumed by the management on hunger-strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union —*vide* letter Exb. W-5.

As regards issue No. 2, he argued that "retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of Supreme Court in a case "Barsi Light Railway Co., Ltd *versus* K.N. Jogalekar—in 1953—and still holds good being the judgement of larger bench. He further viewed that the judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

(1) DCM—*versus*—Shambunath Mukherjee.

(2) State Bank of India—*versus*—Subramaniam and others.

He pointed out that a division bench of Bombay High Court have held in case of Kamelsh Kumar, Rajnikant Mehta—*versus*—Central Government Industrial Tribunal No. 1 that the termination of services of workman for loss of confidence is not a retrenchment—1980—LLJ 336 (Bom). He accordingly pleaded that the "surplusage" for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issuewise are as under :—

(1) From the facts and evidence, it is clear that there was unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlements, dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union — vide their letter, dated 17th March, 1981 Exb. W-5. More so the management did send registered A/D letter which was returned by the postal authorities with remarks "हमें से इन्कार बाविस". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. The factum of having reported on the 4th April, 1981 has also not been provided. This all goes to establish that the workman remained absent unauthorisedly from 20th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the Standing Order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the Management and deliberately ignored by him. Nor the plea of *malafide* or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order, is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (00) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee? In this case the terminology of the clause 15 of the Standing order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order—Discontinuation of Service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 & 12(b) he shall lose his appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the Management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman I award 15 (fifteen) days wages for every completed year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undischarged with the Management.

J. D. MEHTA,
Sole Arbitrator.

Dated, the 21st April, 1981.

Forwarded (four copies), to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, under Section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the *Haryana Government Gazette*.

J. D. MEHTA,
Sole Arbitrator.

No. 9(I)-81/6-Lab./14936.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Phool Kumar, son of Sher Singh, workman and the management of M/s Hindustan Everest Tools Limited, Jatheri, Sonapat :—

BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI-110027

SHRI PHOOL KUMAR, SON OF SHRI SHER SINGH

(Workman)

Versus

THE MANAGEMENT OF M/S HINDUSTAN EVEREST TOOLS LIMITED JATHERI, DISTRICT
SONEPAT, (HARYANA)

Appearances.—

1. Shri Phool Kumar along with Shri Chander Singh (authorised representative).
2. Shri U. C. Pant. along with Shri D. N. Gupta.

ARBITRATION AWARD

The above named parties appointed me as a sole arbitrator in terms of arbitration agreement dated 29th April, 1981 under section 10A(3) of the Industrial Disputes Act 1947. The said arbitration agreement was published by the *Haryana Government Gazette* (extraordinary) vide No. ID.RTK, 67:81/26742, dated 27th May, 1981. The following point in dispute was referred to me for arbitration.

- (1) Whether the action taken by the management was justified? if not, to what relief the workman is entitled to?

Usual notices were issued to the parties. The parties made their appearances in response to the notices and filed their statement of claims, written statement as well as rejoinder. The management filed copies of the documents in this case in support of their contention, whereas the representative of the workmen filed documents collectively for all the cases without being written by any individual worker. The pleadings of the parties gave rise to the following issues with their consent.

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days from duty.
- (2) Whether the action taken by the management tantamounts to retrenchment. If so to what relief he is entitled to?

Thereafter, the parties adduced their evidences and also addressed the arguments, a copy of which was given in writing.

Shri Phool Kumar appeared himself as a witness. He deposed that he joined Dharna on 19th March, 1981 in support of hunger strikers at Nehru Place (New Delhi) as well as the demands raised and remained on Dharna till 3rd April, 1981. He did not receive any letter of the management regarding his absence from duty during this period. The Dharna was within the knowledge of the management. He had no knowledge about the Rules/Standing orders of the Company nor the same was found displayed by him in any section. He further added that someone came at Nehru place and offered a glass of juice to the hunger strikers on 3rd April, 1981 and he did not know whether he was an Officer or the official of the Labour Department. He added that he did not write to the Labour Department individually, as the dates for the submission of the demands were fixed by the Labour Department at places like Chandigarh, Sonapat and Faridabad. He added that he went for duty on 4th April, 1981 but was stopped at the gate by the Watchman and he had not been paid his dues, including gratuity by the management.

In his cross-examination, he told that the dharna was started on 9th March, 1981 and he was on dharna from the same date. He added that no other worker resorted Dharna after he had resorted. He told that there were about 250—300 persons when the dharna was lifted on 3rd April, 1981. He told that he was stopped by Shri Mohinder Singh Watchman on 4th April, 1981, who similarly stopped 28—30 workers on that gate as he had a list of workmen with him. He admitted his postal address as correct but denied to have received any letter of the management including the Registered A/D letter dated 2nd April, 1981 sent by the Management and returned by the Postal authorities with the remarks in Hindi "Lene se inkar". He denied to have received the confirmation letter from the Management, but identified his signature on his confirmation letter dated 27th June, 1977 wherein observance of the Standing Orders of the Company being laid-down. He, however, admitted that he did not write to the Management to take him back on duty after he was refused by the watchman on 4th April, 1981. Nor he approached the management to collect his dues or made such request in writing.

While the management examined S/Shri U.C. Pant, Deputy Manager (Personnel) and Mr. R. K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal Singh and Niranjan Singh, Watchmen, as witnesses.

Shri Pant stated that he visits H.O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged "Ram Ram" as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned etc. is given to the Security Supervisor, to ensure that these workers are not allowed to enter the factory again. Only two workers namely S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the Standing Order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting 2 workers namely Jagbeer Singh and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand notice dated 6th January, 1981 which was since been rejected and filed by the Labour Department vide their endorsement No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice vide letter dated 16th March, 1981 Exhibit W-4. He further confessed to have met the Labour Minister, Haryana, when the Deputy Labour Commissioner Sonapat had called a conciliation meeting where he explained the factual position to the Minister. He denied the

receipt of letter dated, 17th March, 1981 Exhibit W-5, but admitted the letters dated 3rd April, 1981 Exhibit W-6 and the Management letter, dated 15th March, 1981 Exhibit W-7, letter dated 17th March, 1981 Exhibit W-8 and letter, dated 19th September, 1981 Exhibit W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to unauthorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M. after being denied the entry by the watchman and wanted to meet Shri U C. Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met him on that day. In his cross-examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workmen excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the management to tender his evidence.

Shri Rajpal and Shri Niranjn Singh, Watchmen deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the head-watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the Standing Order. Shri Rajpal, watchman deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3 P.M. 19th April, 1981 being Sunday, the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming for duty on that day does not arise.

In his cross-examination he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about Standing Orders from Time Office and there was no other worker at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster roll for the year 1981 wherein the word 'Left' have been recorded against the names of workers whose cases are under arbitration. He also deposed that he heard that workers namely Vikram Pal, Chander Pal, Ram Chander and Bagadar Prasad had got employment with M/S. Super Tools and Zandu Forgings, Bhiwadi (Raj).

In his cross-examination, he could not tell the name of the worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workmen, drew my attention to the illegality of the orders passed by the Management by invoking clause No. 15 of the Standing Order as there was no dis-obedience or defiance of the Standing Orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the Management. Thus it could not be considered as absent from duty and striking of their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection he relied on the following awards contained in the cases cited below :-

(1) G.T. Ltd -Versus Chemical & Fibres India Limited in 1979 --LIC Page No. 290.

(2) Buckingham & Co., Versus Venkatiah -LLJ 1963 Page No. 638.

He also questioned the bona fide of the management in acting in harsh and perversive manner to crush the peaceful and constitutional activities of the union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :-

(1) State Bank of India -Versus - Subramaniam 1967 -1 -LLJ Page No. 278.

(2) Hindustan Steel Limited versus Presiding Officer Labour Court 76 LIC Page 766.

(3) Delhi Cloth and General Mills Company Limited Versus Shambunath Mukherjee 80, LLJ Page 1.

(4) Mohan Lal Versus Bharat Electronics Limited 81 Page LIC 806.

(5) Santosh Gupta -Versus - State Bank of Patiala 80 LIC 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna etc. have different versions and thus cannot be accepted that a group of workers i.e. 31 or so were constantly on Dharna. He refuted the allegations of the learned counsel from the opposite side that the Management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position *vide* their letters dated Exhibit W-7 and Exhibit W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice *vide* endorsement No. 38707, dated 21st August, 1981. It is, obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjana Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the Standing Order have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union *vide* letter Exhibit W-5.

As regard issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Limited *Versus* K. N. Jogalekar" in 1953 and still holds good being the judgement of a larger bench. He further viewed that the judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) D.C.M. *Versus* Shambunath Mukherjee.
- (2) State Bank of India *Versus* Subramaniam.
- (3) Hindustan Steel Limited *Versus* Presiding Officer, Labour Court, Orissa and others.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta — *Versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment—1980LLJ336 (Bombay). He accordingly pleaded that the 'surplusage' for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to permit retrenchment in the present case.

I have applied my mind to the evidences adduced by the parties as well as arguments advanced in support of their contentions... My findings issue wise are as under :—

- (1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected *vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the Management about his factum of Dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letter (recall notices) and admitted in an indirect manner by the Union *vide* their letter dated 17th March, 1981 exhibit W-5. More so the management disend Registered A/D letter which was returned by the postal authorities with remarks "ने से उत्तर नमिल". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the Management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 19th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the each of contract with his own action which followed with an intimation to him by the management under clause 15 of the Standing Order.

The contention of the workman's counsel that action under clause No. 15 of the Standing Order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of mala fide or victimisation is forceful because the workman has himself to be blamed for the disregard of the Standing Order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the Standing Orders have got the force of law and deemed provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the Management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (00) of the Industrial Dispute Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order Discontinuation of service —

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under Standing Orders 12 & 12 (b) he shall be deemed to have resigned on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management."

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25 (F) (b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the Management.

J. D. MEHTA,

Sole Arbitrator.

Dated 18th April, 1981.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, as required under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the *Haryana Government Gazette*.

J. D. MEHTA,

Sole Arbitrator.

No. 9(I)-81/6 Lab. 14937.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Jeetan, son of Shri Dhani workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri Sonepat.

**BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI**

Shri Jeetan, son of Shri Dhani

.. Workman

Versus

The Management of Hindustan Everest Tools Ltd., Jatheri, district Sonepat (Haryana)

Appearances.— (1) Shri Jeetan alongwith Shri Chander Singh (Authorised Representative).
(2) Shri U.C. Pant, alongwith Shri D.N. Gupta.

ARBITRATION AWARD

The above named parties appointed me as a Sole Arbitrator in terms of the Arbitration agreement dated 29th April, 1981 under section 10-A(3) of the Industrial Disputes Act, 1947. This arbitration agreement was published in the *Haryana Government Gazette* (extra ordinary).—vide No. 1D/RTK/67/81/26714, dated 27th May, 1981. In this agreement, the following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to.

In response to the notices issued to the parties, the parties made appearances, filed their statement of claims, written statement as well as rejoinder. The management filed copies of documents in support of their contentions in this case, whereas the representative of the workmen filed documents collectively for all the cases without being written by any individual worker. Thus, following issues were framed on the basis of their pleadings with their consent :—

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days from duty.

- (2) Whether the action taken by the management tantamounts to retrenchment. If so to what relief he is entitled to?

Thereafter, the parties adduced their evidences and advanced arguments, copies of which were given in writing. The workman appeared himself as a witness and his statement was recorded. Shri Jeetan stated that he was on Dharna from 9th March to 3rd April, 1981 in Nehru Place (Head office of the company) in support of the demands. The dharna was within the knowledge of the management because the Company's Labour Officer used to visit Head Office from time to time. He further told that he had no knowledge about the Rules/Standing Orders of the Company nor he found the same displayed on the notice board of the Company. Nor he had never been charge sheeted/warned during the period of his service with the management. He identified the photographs of S/Shri Janardhan Ojha and Jagbeer Singh, the hunger strikers Exb. W-1. He further stated that he reported for duty on 4th April, 1981, but was stopped by the Chowkidar, who told that this was the order of Mr. U.C. Pant. He did not enter into any correspondence individually, but the Union had been making efforts for the settlement and he had not been paid any compensation by the Management. In his cross-examination, he told that he could not fully remember the demands sponsored by the Union nor the names of the workers who were on Dharna. He told that the workers used to go on duty and come for Dharna but he stayed continuously on Dharna. He denied the receipt of letters, dated 12th March, 1981 and 14th March, 1981 sent under U.P.C. by the management and also denied the receipt of Registered A/D letter dated 2nd April, 1981 returned by the postal authorities with the remarks "लेने से ईकार बाविस.", He further admitted that no worker can absent from duty without getting his leave sanctioned except in case of sickness. While the management examined S/Shri U.C. Pant, Deputy Manager (Personnel) and Mr. R. K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal and Niranjana Singh, Watchmen as witness.

Shri Pant stated that he visits Head Office (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged "Ram Ram" as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned etc. is given to the Security Supervisor, to ensure that these workers are not allowed to enter the factory again. Only two workers namely S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the Standing Order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting 2 workers namely S/Shri Jagbeer Singh and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand notice dated 6th January, 1981 which has since been rejected and filed by the Labour Department vide their endorsement No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice vide letter dated 16th March, 1981 Exb. W-4. He further confessed to have met the Labour Minister Haryana when the Deputy Labour Commissioner, Sonapat had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letter dated 17th March, 1981 Exb. W-5 but admitted that letters, dated 3rd April, 1981 Exb. W-6 and the Management letter dated 15th March, 1981 Exb. W-7, letter dated 17th March, 1981 Exb. W-8 and letter, dated 19th September, 1981 Exb. W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to unauthorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M. after being denied the entry by the Watchman and wanted to meet Shri U.C. Pant. He went inside to seek instruction from Mr. Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met him on that day. In his cross examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the Management to tender his evidence.

Shri Raj Pal and Shri Niranjana Singh, Watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the head-watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the Standing Order. Shri Rajpal Watchman, deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3 P.M. 19th April, 1981 being Sunday, the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming for duty on that day does not arise. In his cross-examination he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about Standing Orders from Time Office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the muster roll for the year 1981 wherein the word 'Left' have been recorded against the name of workers whose cases are under arbitration. He also deposed that he heard that workers, namely, Vikram Pal, Chander Pal, Ram Chander and Bagedan Parshad had got employment with M/s. Super Tools and Nandu Forgings, Bhiwadi (Raj).

In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments.

The learned representative of the workmen, drew my attention to the illegality of the orders passed by the management by invoking clause No. 15 of the Standing Order as there was no disobedience or defiance of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that he had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below :—

- (1) G.T. Lad *versus* Chemical and Fibres India Ltd. in 1979 - L.I.C. page No. 290.
- (2) Buckingham Company *versus* Venkariah - LLJ 1963 P. No. 638.

He also questioned the bonafide of the management in acting in harsh and perverse manner to crush the peaceful and constitutional activities of the union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :—

- (1) State Bank of India *versus* Subramaniam - 1967 - 1 - LLJ P. No. 278.
- (2) Hindustan Steel Ltd., *versus* Presiding Officer, Labour Court - 1976 L.I.C. P. 766.
- (3) Delhi Cloth & General Mills Co. Ltd., *versus* Shambunath Mukherjee - 1980 LLJ - Page 1.
- (4) Mohan Lal *versus* Bharat Electronics Ltd. - 1981 - Page L.I.C. 806.
- (5) Santosh Gupta *versus* State Bank of Patiala - 1980 - L.I.C. P. No. 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna etc. have different versions and thus cannot be accepted that a group of workers i.e., 31 of so were constantly on Dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position, — vide their letters dated Exb. W-7 and W-8 and their standing has been vindicated by the Labour Department, Haryana, by rejecting the demand notice, — vide endorsement No. 38707 dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbir Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absence can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union, — vide letter Exb. W-5.

As regards issue No. 2 he argued that "Retrenchment" would constitute termination of service by the employer but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd., *versus* K.N. Jagdekar in 1953 and still hold good being the judgment of a larger bench. He further viewed that judgment in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case :—

- (1) D.C.M. *versus* Shambunath Mukherjee.

(2) State Bank of India *versus* Subramaniam.

(3) Hindustan Steel Ltd., *versus* Presiding Officer, Labour Court, Orissa and others.

He pointed out that a Division bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LJJ P. No. 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issuewise are as under :—

- (1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under U.P.C. and admitted in an indirect manner by the Union—*vide* their letter dated 17th March, 1981 ex. W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with remarks "लेने से इनकार करित". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisidely from 9th Mch, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the Standing Order. That action of the leaving reported on 4th April, 1981 has not been proved. The contention of the workmen's counsel that action under clause 15 of the Standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evidence from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of *mala fide* or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of his duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deemed provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisidely. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workmen have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2(oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the D.C.M.

Clause No 15 of the Certified Standing Order —Discontinuation of Service :

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall loose lien on his on appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management".

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equality and justice to award relief to the workman. Award 15 (fifteen) days wages for every completed year of service to the workman, which could be equivalent to the Compensation payable under section 25(F) (b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the Management.

J. D. MEHTA,

Dated the 18th April, 1981.

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Government of Haryana, Chandigarh, Labour and Employment, as required under section 17 of the Industrial Disputes Act, 1947 for favour of necessary publication in the *Haryana Government Gazette*.

J. D. MEHTA,

Sole Arbitrator.